



## Final Regulation Agency Background Document

<b>Agency name</b>	Cemetery Board
<b>Virginia Administrative Code (VAC) citation</b>	18 VAC 47- 20
<b>Regulation title</b>	Cemetery Board Regulations
<b>Action title</b>	Amend to implement changes to the Code of Virginia
<b>Date this document prepared</b>	January 16, 2007

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Brief summary

*Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation. Also, please include a brief description of changes to the regulation from publication of the proposed regulation to the final regulation.*

Chapters 192 and 247 of the Acts of the 2004 General Assembly, which were the result of HB 857 and SB 303 respectively, require that changes be made to the current regulation. The new regulation establishes qualifications and standards of conduct for compliance agents employed by cemetery companies and also adds a section on protection of perpetual care and preneed trust funds.

### Statement of final agency action

*Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.*

The Cemetery Board reviewed and adopted the final regulations, entitled "Cemetery Board Regulations" on January 10, 2007.

## Legal basis

*Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter numbers, if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.*

Section 54.1-2313.D states in part that the Board shall have the power and duty to regulate preneed burial contracts and perpetual care trust fund accounts and regulate sales personnel.

Section 54.1-2313.E states in part that the Board shall adopt such other regulations it deems appropriate.

Section 54.1-201.E states in part that regulatory boards shall promulgate regulations in accordance with the Administrative Process Act necessary to assure continued competence, to prevent deceptive or misleading practices by practitioners and to effectively administer the regulatory system administered by the regulatory board. The regulation is mandatory to implement Chapter 192 and Chapter 247 of the Acts of the 2004 General Assembly.

## Purpose

*Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons it is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.*

The new regulation establishes qualifications and standards of conduct for compliance agents employed by cemetery companies as well as standards of approval for training courses for compliance agents. It also provides a mechanism for protection of the perpetual care and preneed trust funds. The new regulation is necessary to implement Chapter 192 and Chapter 247 of the Acts of the 2004 General Assembly which were the result of HB 857 and SB 303. By providing a mechanism for protection of the trust funds and establishing qualifications and standards for compliance agents and training, compliance agents and the public they deal with know what is expected of them and they will be less likely to engage in improper or dishonest conduct therefore providing protection of the public's health, safety and welfare. The goal of the regulation is to establish qualifications and standards of conduct for compliance agents in accordance with SB 303 and to provide a mechanism for protection of the trust funds and appointment of a receiver in accordance with HB 857.

## Substance

*Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the "All changes made in this regulatory action" section.*

These regulations are necessary to implement Chapter 192 and Chapter 247 of the Acts of the 2004 General Assembly, which were the result of HB 857 and SB 303, and to establish the qualifications and standards therein mandated.

The regulations provide:

- 1) Definitions of terms to be used in the regulations;
- 2) Qualifications for compliance agents and designees;
- 3) Standards for protection of perpetual care and preneed trust funds;
- 4) Standards of conduct for compliance agents and designees; and
- 5) Requirements for training courses.

**Issues**

*Please identify the issues associated with the proposed regulatory action, including:*

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
- 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
- 3) other pertinent matters of interest to the regulated community, government officials, and the public.*

*If there are no disadvantages to the public or the Commonwealth, please indicate.*

The primary advantage to the public and the agency is that the people will know what is expected of compliance agents and those who go through the training become more aware of the Cemetery laws and regulations and will be less likely to engage in behavior which may result in a complaint. Also, it provides a mechanism for the board to initiate legal proceedings to protect the perpetual care and preneed trust funds from wrongful acts by licensees thereby protecting the public.

The regulatory action poses no known disadvantages to the public or the Commonwealth.

**Changes made since the proposed stage**

*Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar’s office, please put an asterisk next to any substantive changes.*

<b>Section number</b>	<b>Requirement at proposed stage</b>	<b>What has changed</b>	<b>Rationale for change</b>
18 VAC 47-20-210	Preneed trust fund requirements	Added subsection requiring cemetery companies to make deposits to the preneed trust fund in accordance with the statute.	The regulations require deposits into the perpetual care trust fund to be done in accordance with the statute and there needs to be a similar requirement for the preneed trust fund to protect the public.

**Public comment**

*Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.*

<b>Commenter</b>	<b>Comment</b>	<b>Agency response</b>
K. Carter Bell	Consider adding a section to the regulations which would require a cemetery company to place deposits into the preneed trust fund in accordance with the statute just as there is now for perpetual care trust funds. There should be similar requirements for both the preneed and perpetual care trust funds in order to protect the public.	The Board reviewed this comment when drafting the final regulations. The Board agreed with your suggestion and added a new subsection to the regulations which requires a cemetery company to place deposits into the preneed trust fund in accordance with section 54.1-2325 of the Code of Virginia.

Enter any other statement here

**All changes made in this regulatory action**

*Please detail all changes that are being proposed and the consequences of the proposed changes. Detail new provisions and/or all changes to existing sections.*

<b>Current section number</b>	<b>Proposed new section number, if applicable</b>	<b>Current requirement</b>	<b>Proposed change and rationale</b>
18 VAC 47-20-10		Definitions	Add definitions for approved training program and compliance agent designee to implement changes required by SB 303.
	18 VAC 47-20-35		Add section establishing qualifications for compliance agents & designees to implement changes required by SB 303.
18 VAC 47-20-210	18 VAC 47-20-210.C		This new subsection will require cemetery companies to make deposits into the preneed trust fund in accordance with section 54.1-2325 of the Code of Virginia. There is a corresponding requirement for the perpetual care trust fund already in the regulations. This will provide the same public protection for the preneed trust fund as already exists for the perpetual care trust fund.
18 VAC 47-20-240	18 VAC 47-20-260	Allows for appointment of receiver for execution of preneed contracts at need if the cemetery company	Allows board to initiate legal proceedings to protect both the perpetual care and preneed trust funds if the board finds the licensee or its agent has committed any wrongful acts as

		license is suspended or revoked	described in the regulation and statute. This change expands the board’s authority to protect the public from wrongdoing by a licensee or its agent pursuant to HB 857.
	18 VAC 47-20-250		Add section establishing conduct for compliance agent and designee to implement changes required by SB 303. This is needed to ensure that Virginians are dealing with cemetery companies that comply with the law and regulation.
	18 VAC 47-20-270		Add section which provides standards of approval for training courses needed for a person to become qualified as compliance agent or designee in order to implement changes required by SB 303. This is needed to ensure that courses provided to people with minimal experience get the education required to meet the qualifications in the regulation.

**Regulatory flexibility analysis**

*Please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.*

Chapter 192 and Chapter 247 of the Acts of the 2004 General Assembly and the current Code of Virginia mandate amendment of the regulation. The agency considers the proposed changes as the least burdensome and no other alternatives were identified. The proposed regulations do not impact small businesses any differently than other businesses.

**Family impact**

*Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.*

No impact on families in Virginia has been identified as resulting from the proposed amendment to the regulation.